

Council Chambers-City Hall
City of Lodi
Wednesday, January 9, 1929

Pursuant to the adjournment taken from regular meeting of January 7, 1929, the City Council of the City of Lodi met in regular session at 8:20 o'clock P. M. on the date and at the place first herein above written. Councilmen Hale, Roach, Shattuck, Wiehe and Spooner (Mayor) present, the latter presiding. Mr. Robert M. Searls, Assistant City Attorney, being present at the request of the Mayor addressed the Council regarding conditions as now existing in the suit of the City of Lodi against the Pacific Gas and Electric Company, the Eastbay Municipal Utility District, Stephen J. Kieffer and others. He stated that after consultation with Superintendent Henning he felt assured that the construction of a hydro-electric power plant on the lands of the Colorado Power Company would be a feasible project if the City was assured of the release of waters proposed to be impounded by the defendants in the suits above mentioned.

The Clerk then read a letter from Superintendent J. A. Henning a true copy of which follows these minutes at page 314 thereof.

The Clerk then read a letter from the Colorado Power Company tendering a deed to the riparian lands of that Company in Amador and Calaveras Counties, California, and setting forth the conditions subsequent upon which the deed would be given. A true copy of this letter follows these minutes at page 315 thereof.

After the reading of the letter of tender above referred to, the Clerk read the deed at length to the City Council and to the attorneys for the City and Colorado Power Company. After consideration of the deed and the conditions therein enumerated Councilman Shattuck, seconded by Councilman Wiehe, introduced Resolution No. 566, "A Resolution accepting the deed from Colorado Power Company."

Resolution No. 566 was then passed and adopted by the following vote:

AYES: Councilmen Shattuck, Wiehe, Hale, Roach and Spooner,
(Mayor)
NOES: Councilmen NONE
ABSENT: Councilmen NONE

A full and true copy of said Resolution No. 566 follows these minutes at page 318 thereof. Councilman Shattuck, seconded by Councilman Wiehe then introduced Resolution No. 567, "A Resolution formally accepting the conditions attached to the deed and dedicating the lands therein conveyed to public use as the site for a hydro-electric power generating plant to be used in connection with the present power distribution system of the City of Lodi."

Resolution No. 567 was then finally passed and adopted by the following vote:

AYES: Councilmen Shattuck, Wiehe, Hale, Roach and Spooner,
(Mayor)
NOES: Councilmen NONE
ABSENT: Councilmen NONE


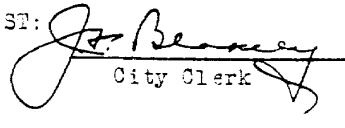
A full and true copy of said Resolution No. 567 appears at page 319 of these minutes.

It appearing on advice of Council that suit in eminent domain against Stephen J. Kieffer seeking to condemn a parcel of land riparian to the Mokelumne River situated between the two parcels just acquired from the Colorado Power Company would be necessary, institution of such a suit was authorized, ordered and directed by the passage of Resolution No. 568 introduced on motion of Councilman Roach, Wiehe second, and finally passed and adopted by the

following vote:

AYES: Councilmen Roach, Wiehe, Hale, Shattuck and Spooner,
(Mayor)
NOES: Councilmen NONE
ABSENT: Councilmen NONE

On motion of Councilman Shattuck, the City Council then stood adjourned until the day and hour of their next regular meeting.

 ATTEST: 
City Clerk

December 27, 1928

To the Honorable City Council,
of the City of Lodi,
Lodi, California

Gentlemen:

At the beginning of the year it is customary to look forward and to plan one's activities for the twelve months to follow. In my capacity as Superintendent of Public Utilities I beg leave to call attention to some of the major problems in this department yet before us.

The water storage proposition which I believe has not been given enough serious consideration. A 1,000,000 gallon elevated steel tank that can be erected at a cost of \$60,000 would save the city annually \$3,000 on power bills, 4% on insurance premiums in the business district of the city, assure the city of a continuous supply of water in case of breakdown, besides relieving the electric system of pumping load, when it is loaded to capacity.

I would call your attention to the proposition to remodel the water works building, at an expense of \$3,500. This work I think might well be held in abeyance as the only good expected to be accomplished is a better looking building. Indeed it might be possible to accomplish the same results at only nominal expense by planting ivy to cover the building walls and make a very attractive and appropriate housing for the water works. I think \$25.00 would cover the expense and release this appropriation for a more useful purpose.

The extension of water mains in the Burr addition will be completed before the first of February, and before that time I think a draft of a new water rate ordinance will be in your hands for your consideration.

Then there is the proposition of the Colorado Power Company submitted by Mr. Thayer which I believe is of prime importance. Assuming that the riparian water rights are adjudicated in the river so that there will flow down the river in undiminished quantity as much water as in the past 22 years a plant situated at the Thayer site could deliver an average annual output of above 12,000,000 K.W.H. at a production cost delivered to the City of Lodi of not to exceed $3\frac{1}{2}$ mills per K.W.H.

This figure indicates a large possible saving to the city in view of the present cost of 9 mills per K.W.H. even if an additional cost for adequate stand-by service to added to the $3\frac{1}{2}$ mill price.

In view of this possible saving, and in view of other advantages to the city of having this independent power supply, I believe and recommend that the city should take immediate steps to acquire these riparian lands, if it can be done at a nominal cost, and have the necessary engineering studies made looking to the development of this power site. Steps should also be taken to protect the city's legal position as a riparian owner if this land is acquired.

Immediate action is advisable as the water of this stream so vital to this locality is fast passing into other control than that of the people of this district.

Yours truly,

Superintendent Public
Utilities.

January 7, 1929

Council of the City of Lodi,
San Joaquin County, California.

Gentlemen:-

Pursuant to the request of Mayor Spooner made to the President of our Company that we present to your Honorable Council a definite proposal, whereby the City of Lodi can at this time firmly secure the property of our Company riparian to the Mokelumne River, in Amador and Calaveras Counties, California, and as soon as practical thereafter develop thereupon a municipal Power Project to be used in connection with the present municipal distribution system of the City of Lodi, we submit the following plan for your consideration:

Referring to our formal presentation to your Council on June 27, 1928, of a proposal to make a power survey to the City of Lodi, and the contiguous territory, under the supervision and direction of the Lodi District Chamber of Commerce, which proposal was by resolution approved by the City Council at an adjourned regular meeting held on the same date, and wherein the Council requested the Chamber of Commerce to supervise and direct such a survey, which request was by resolution unanimously passed by the Board of Directors of the Chamber of Commerce at their subsequent regular meeting, the survey was undertaken and has been and is now being prosecuted. The results of the survey to date, together with our studies and engineering investigations of the potential riparian power output of our Company, clearly indicate that the economic position and interests of the City of Lodi would be improved and protected by the acquisition of the riparian holdings of our Company and the immediate development thereupon of a municipally constructed and operated hydroelectric Power Project to be maintained in conjunction with the present municipal electric distribution system of the City.

Recent developments indicate that the time is now opportune for the City of Lodi to determine upon the making of a municipal utility of our Project and therefore, in compliance with the request of your Mayor we are herewith submitting to your Honorable Council a proposal whereby the City may firmly secure our property, to-wit:

We hereby tender in fee a deed of the property thus sought to the City of Lodi, conveying the said riparian property of our Company on the Mokelumne River, subject to the following conditions which shall be more fully set forth in the said deed, and which shall be exercised in the sequence following:

First: That within a reasonable period from and after the date hereof, you shall accept the deed with such title to the said riparian property as our Company now has:

Second: That thereafter and within a reasonable period from and after the date hereof you shall cause the engineering features of the proposed Project to be finally investigated, determined and the findings reported to our Company;

Third: That thereafter and within a reasonable period from and after the date hereof you shall cause to be held an election authorizing the construction, upon the property herein referred to, of the proposed Project Works;

Fourth: That thereafter and subsequent to the authorization and construction of the said Project Works you shall, for a term of years, cause to be paid semi-annually to our Company or their successors, a per kilowatt hour royalty upon the electric energy production from the said Project.

If the foregoing conditions shall not be complied with in their respective sequence, your title would, upon lapse of the periods so provided in the deed for their observance, revert to and revest in the undersigned.

We appreciate that before actual construction of the Project Works can be undertaken, the proposition must first be submitted to your voters for their approval, and that this cannot be done prior to your having made a more detailed engineering investigation. In view of the necessity of the foregoing procedure, we suggest this plan as one which we believe will afford adequate opportunity for the final engineering investigations, and at the same time place the City of Lodi in a firm position during the period that must of necessity elapse before actual construction of the Project Works can be undertaken.

There is a necessary condition to which we request the City of Lodi to agree as a consideration for the delivery of the deed at this time, the purpose of which is to protect our Company in its existing property rights, in the property to be conveyed, should the title revert to our Company by reason of the operation of the conditions subsequent inserted in the deed. This necessary condition is that the City of Lodi shall in good faith protect, defend and preserve all of the existing rights of our Company against any invasion by continuing to prosecute the pending suit against the Pacific Gas and Electric Company or by instituting another suit in its stead, and further by instituting such other suits as may be necessary for injunctions or damages or otherwise, and that no settlement or dismissal of any such litigation will be made by the City of Lodi as Grantee except upon terms that are satisfactory to and approved by the Colorado Power Company as Grantor, either for injunction or damage or otherwise, including any suit against the City of Lodi.

In order to preserve the integrity of our Power Project for the maximum development thereof, we recommend, should this proposal be accepted, the advisability of the City of Lodi immediately bringing a suit in eminent domain condemning the property described in the amended complaint in suit No. 1523 now pending in the Superior Court of Calaveras County, California, by Colorado Power Company as plaintiff vs. Stephen E. Kieffer, et al., defendants.

Should your Honorable Council accept the deed as herein proposed, and thereafter there should become due and payable any taxes upon the property so conveyed, it shall be understood that such taxes, if any, shall be paid by the City of Lodi, and further that the City shall preserve the title so conveyed to it by our Company free of all claims, liens or charges of whatsoever, nature incurred, done, or suffered by the acts of the City of Lodi pending the actual construction of the Project Works as herein set forth and the subsequent payment of royalty or sums in lieu of royalty to be paid to our Company or their successors pursuant to the terms to be recited in the deed so conveying the said property.

In accepting the deed as proposed to be tendered by our Company, the City of Lodi shall covenant and agree that it will not voluntarily sell or convey the property described therein, or any part thereof, or any interest therein, unless it be to such municipal or public utility district as may hereafter be organized which shall include the City of Lodi and which shall serve the City of Lodi and its environs with electric energy, and then only upon acceptance by said district of the same conditions as are herein specified; but if, however, the said property, or any part thereof, or any interest therein should be transferred by adverse proceedings, or otherwise whereby the revesting of the title in our Company should be rendered impossible, our Company shall be immediately entitled to receive directly seventy-five per cent of the entire consideration otherwise to be received by the City of Lodi for such transfer of title after deducting therefrom so much of said compensation as is designated as compensation for improvements placed on said premises the actual cost of such improvements, it being intended by this proposal that the said property or said portion of the avails thereof shall be returned or paid to our Company unless the proposed hydroelectric power project is constructed and operated and a royalty or sums in lieu of royalty paid to our Company for the stated period to be recited in the deed.

In accepting the deed, the City of Lodi shall covenant and agree that, if the said property should return to the Colorado Power Company by reason of the breach of any condition subsequent in the deed, the City of Lodi will transfer to Colorado Power Company at the time the said condition subsequent becomes operative any claims for damages to the property, then existing in favor of the City of Lodi against any person, firm, corporation, municipal corporation, or body, on account of any diversion of waters, or invasion of riparian rights, and that the Colorado Power Company shall be entitled to such transfer of any claim for damages at that time; and that the City recognizes that the continued existence of the property with the water rights intact is the sole security to the Colorado Power Company for performance of the conditions subsequent to said grant, and that therefore until the grantee shall have fully complied with said conditions subsequent the Colorado Power Company is entitled to any amount of damages awarded by judgment, or as the result of settlement, for the taking of any water from the property, or invasion of the water rights connected therewith.

That the position of the City of Lodi may be strengthened in any riparian litigation, we will agree to become a joint party to such litigation, either as plaintiff or defendant, as in the opinion of your counsel the circumstances in any such litigation may require.

In view of the status of our present litigation, we are of necessity compelled to make this proposal for immediate acceptance or rejection. Therefore, unless the same is accepted within ten (10) days from and after the date hereof, upon the conditions herein recited, this proposal is to be considered as withdrawn.

Very truly yours,

ATTEST:

Secretary

COLORADO POWER COMPANY,

By _____
President.

RESOLUTION 566

WHEREAS, Colorado Power Company has tendered to the City Council of the City of Lodi a deed conveying to the City of Lodi certain riparian property of said corporation situate on the Mokelumne River in Amador and Calaveras Counties, State of California, which, in the judgment of the representatives of the said company and of this Council, is economically adapted and necessary as a site for the development of a municipally owned and operated hydro-electric Power Plant, to be constructed and operated as a project works by the City of Lodi in connection with, and to be made a part of, the present existing municipal electric distribution system of the City of Lodi; and

WHEREAS, the conditions of the said deed are conditions subsequent, which do not require the City of Lodi to construct the said Project Works until the said project has been designed along lines which will meet with the requirements of the present municipal electric distribution system and until the voters of the City of Lodi shall have had submitted to them a proposal to incur the necessary indebtedness for the construction and operation of the proposed hydro-electric power plant;

NOW, THEREFORE, BE IT, AND IT IS HEREBY

RESOLVED, that the City of Lodi does hereby accept said deed, subject to the terms and conditions therein contained, and the Clerk of this Board is hereby authorized and directed to cause said deed to be recorded in the offices of the County Recorders of Amador and Calaveras Counties, in the State of California.

RESOLUTION 567

WHEREAS, Colorado Power Company has offered to deliver to the City of Lodi a deed conveying to said city certain riparian property of said corporation situated on the Mokelumne River in Amador and Calaveras Counties, in the State of California, which, in the judgment of the representatives of the said company and of this Council, is economically adapted and necessary as a site for the development of a municipally owned and operated hydro-electric power plant, to be constructed and operated as a project works by the City of Lodi in connection with, and to be made a part of, the present existing municipal electric distribution system of the City of Lodi; and

WHEREAS, the conditions attached to the tender of the said deed are that the City of Lodi accept the deed, conveying the property of the Colorado Power Company as hereinafter described and such title to the said property as the Colorado Power Company now has subject to certain conditions subsequent expressed in said deed, and that the settlement or dismissal of any litigation now pending, or which may follow the acquisition of title to the said property by the City of Lodi, affecting the riparian rights to the flow of the Mokelumne River through the said property, which rights are part and parcel of the said property, shall be satisfactory in terms to the Colorado Power Company and approved by it; and

WHEREAS, the City Council of the City of Lodi believes that the conditions attached to said offer of conveyance are reasonable, do not involve any present heavy commitment to expenditure by the City of Lodi, and should be accepted;

NOW, THEREFORE, be it, and it is hereby

RESOLVED, that said conditions attached to said tender be and they are hereby accepted, and that the Clerk of this Board is hereby authorized and directed to notify said Colorado Power Company, in writing, of such acceptance and to transmit to said company a copy of this resolution; and be it

FURTHER RESOLVED, that the said property, so conveyed to the City of Lodi in said deed is hereby appropriated and dedicated to public use, to-wit: as a site for the construction of a reservoir, power house, bus-yard, operators' quarters and other appurtenant structures to be designed, constructed and used in the generation of electric energy for the use of the City of Lodi and its inhabitants; and be it

FURTHER RESOLVED, that the City Engineer and the Superintendent of Public Utilities be and they are hereby authorized and directed to take such steps as in their judgment are necessary to determine expeditiously and finally the engineering phases of the proposed project works, and to initiate and press such other investigations and explorations as may be necessary, and report their findings to this Council at the earliest possible date; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to prepare and submit to this Council a report setting forth in detail the legal procedure necessary for the presentation to the electorate of the City of Lodi of a plan for the financing, construction, and operation of the said proposed project works as herein set forth; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to negotiate with the proper Federal and State authorities in the obtaining of information, permits, and licenses necessary and useful for the expedient determination of procedure and construction of the said project works as herein set forth; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to take such steps and to commence, prosecute or defend any litigation which may be necessary for the protection of the rights of the City of Lodi in and to the riparian flow of the Mokelumne River upon the premises so conveyed and to associate said Colorado Power Company as a party to said litigation wherever and whenever he shall deem it necessary for the protection of the interests of the City of Lodi and the contingent interest of the Colorado Power Company; and be it

FURTHER RESOLVED, that none of the said litigation, if and when brought or defended, shall be settled or dismissed during the period of the retention of the said reversionary interest by the Colorado Power Company, except upon such terms and conditions as are satisfactory to the Colorado Power Company and to the City of Lodi; and be it

BE IT FURTHER RESOLVED, that the City of Lodi covenants and agrees that, if the said property should return to the Colorado Power Company by reason of the breach of any condition subsequent in the deed, the City of Lodi will transfer to Colorado Power Company at the time the said condition subsequent becomes operative any claim for damages to the property, then existing in favor of the City of Lodi against any person, firm, corporation, municipal corporation, or body, on account of any diversion of waters, or invasion of riparian rights, and that the Colorado Power Company shall be entitled to such transfer of any claim for damages at that time; and that the City recognizes that the continued existence of the property with the water rights intact is the sole security to the Colorado Power Company for performance of the conditions subsequent in said grant, and that therefore until the grantee shall have fully complied with said conditions subsequent the Colorado Power Company is entitled to any amount of damages awarded by judgment, or as the result of settlement, for the taking of any water from the property, or invasion of the water rights connected therewith; and

BE IT FURTHER RESOLVED, that the Clerk of this Board be and he is hereby authorized and directed to transmit a certified copy of this resolution to the Colorado Power Company, as evidence of the acceptance of its offer, and to cause the deed accepted by the terms hereof to be forthwith recorded in the offices of the County Recorders of Amador and Calaveras Counties, State of California.

FURTHER RESOLVED, that the City of Lodi covenants and agrees that it will not voluntarily sell or convey the property conveyed and deeded to the City by the Colorado Power Company, or any part thereof, or any interest therein, unless it be to such municipal or public utility district as may hereafter be organized which shall include the City of Lodi and which shall serve the City of Lodi and its environs with electric energy, and then only upon acceptance by said district of the same conditions as are herein accepted; but if, however, the title to the said property, or any part thereof, or any interest therein, should be involuntarily transferred by adverse proceedings, to any other person, firm, corporation or public body than the one hereinabove last mentioned, whereby the reversion of the title in the Colorado Power Company by reason of failure of the grantee in said deed to comply with the conditions subsequent therein inserted, should be rendered impossible, then, out of any compensation or damages which may be awarded by a court or jury or in settlement of litigation for the taking or damaging of said premises, there shall be paid to the City of Lodi the total cost of improvements placed on said property, (but in no event more than the portion of said award specifically covering improvements), and twenty-five percent of any balance over and above said amounts, and there shall be paid directly to the Colorado Power Company seventy-five per cent of the entire balance over and above said cost as so limited.

RESOLUTION 568

RESOLVED, that public interest and necessity of the City of Lodi require the taking by said city, through exercise of the right of eminent domain, of all the real property situate in the Counties of Amador and Calaveras, State of California, and more particularly described as follows, to-wit:

That portion of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 5 North, Range 10 East, M.D.B. & M., particularly described as follows:

BEGINNING at a point on the easterly boundary line of the said SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Section 34, from which its northeasterly corner bears North 4 deg. 55' West 245.00 feet, and running thence the following courses and distances variation 17 deg. East:

1st-	S 63 deg. 01'	W. 265.00	Ft., thence
2nd-	N 88 deg. 58'	W. 115.73	" "
3rd-	S 48 deg. 11'	W. 77.59	" "
4th-	N 88 deg. 57'	W. 87.75	" "
5th-	S 68 deg. 51'	W. 128.90	" "
6th-	S 85 deg. 19'	W. 87.75	" "
7th-	S 71 deg. 12'	W. 79.28	" "
8th-	S 83 deg. 18'	W. 97.75	" "
9th-	N 80 deg. 17'	W. 210.77	" "
10th-	S 49 deg. 45'	W. 45.75	" "
11th-	N 58 deg. 50'	W. 91.04	" to the westerly boundary of the said tract from which its NW cor. bears
	N 2 deg. 52'	W. 472.00	Ft., thence
12th-	S 2 deg. 52'	E. 183.00	" "
13th-	S 76 deg. 41'	E. 222.00	" "
14th-	S 84 deg. 50'	E. 126.53	" "
15th-	N 74 deg. 42'	E. 195.24	" "
16th-	N 83 deg. 32'	E. 83.20	" "
17th-	S 80 deg. 12'	E. 127.52	" "
18th-	N 87 deg. 19'	E. 146.81	" "
19th-	S 75 deg. 23'	E. 99.69	" "
20th-	S 36 deg. 09'	E. 82.79	" "
21st-	S 67 deg. 29'	E. 81.35	" "
22nd-	S 48 deg. 10'	E. 72.76	" "
23rd-	S 84 deg. 23'	E. 75.32	" "
24th-	N 27 deg. 50'	W. 65.17	" "
25th-	N 49 deg. 09'	W. 88.11	" "
26th-	N 21 deg. 26'	W. 60.31	" "
27th-	N 58 deg. 49'	E. 58.71	" "
28th-	N 53 deg. 47'	E. 79.15	" "
29th-	N 4 deg. 55'	W. 332.00	" to place of beginning and containing 7.239 acres, more or less and being that portion of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 34, Township 5 North, Range 10 East, M.D.B. & M.

and also all rights for the construction of ditches and the diversion and impounding of water of the Mokelumne River from, on, or over the following property situate in the Counties of Amador and Calaveras, State of California, and more particularly described as follows, to-wit:

(1) The W $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 35, T 5 N, R 10 E, being twenty (20) acres more or less;

(2) The $SE\frac{1}{4}$, and the $E\frac{1}{2}$ of the $SW\frac{1}{4}$, of the $NE\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 34, T 5 N, R 10 E, being fifteen (15) acres more or less;

(3) The $S\frac{1}{2}$, and the $S\frac{1}{2}$ of the $N\frac{1}{2}$, of the $SE\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 34, T 5 N, R 10 E, being thirty (30) acres more or less;

(4) The $S\frac{1}{2}$ of the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 34, T 5 N, R 10 E, being twenty (20) acres more or less.

and be it

FURTHER RESOLVED, that the taking of said property and the fee title thereto is necessary for the public use of the City of Lodi in construction, maintenance and operation of a hydro-electric plant, consisting of a dam, reservoir, conduits, power house and other structures designed to furnish an adequate supply of hydro-electric energy to be distributed to the City of Lodi and its inhabitants by means of the construction of a transmission line from the said power house to the City of Lodi and through its existing municipally owned electric distribution system; and be it

FURTHER RESOLVED, that the City Attorney be and he is hereby authorized and directed to commence eminent domain proceedings for the acquisition of said property and rights in a court of appropriate jurisdiction.